

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1407

Introduced by Senator Leno

February 24, 2012

An act to add Section 56.106 to the Civil Code, to add Section 123116 to the Health and Safety Code, and to add Section 5328.03 to the Welfare and Institutions Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, as amended, Leno. Medical information: disclosure.

Existing law governs the release of a patient's medical records and medical information by a health care provider, health care service plan, pharmaceutical company, or provider. A violation of these provisions that causes economic loss or personal injury to a patient is punishable as a misdemeanor. Under existing law, a patient may inspect his or her medical records if the patient or his or her representative, as defined, presents a written request to the health care provider. Existing law also authorizes a health care provider, health care service plan, pharmaceutical company, or contractor to release a patient's medical information after receiving a valid signed authorization from the patient, the patient's legal representative, as defined, if the patient is a minor or incompetent, and other specified individuals. Existing law provides that a minor may be removed from the physical custody of his or her

parents in dependency proceedings if there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means to protect the child without removing him or her.

This bill would prohibit a psychotherapist, as defined, who knows that a minor has been removed from the physical custody of his or her parent or guardian in dependency proceedings, from releasing or disclosing the information in the mental health records of that minor patient to the patient's parent or guardian based solely on an authorization to release those records signed by the parent or guardian, and from allowing the parent or guardian to inspect or obtain those records, unless the juvenile court has authorized the parent or guardian to sign an authorization for the release of those records after finding that the authorization order would not be detrimental to the minor. Under the bill, when the juvenile court issues such an order, the parent or guardian would be required to present a copy of the order to the psychotherapist before the release of the records or any information about the minor. When presented with the order, the psychotherapist would have no duty to inquire into whether a minor has been removed from the physical custody of his or her parent or guardian in dependency proceedings. Because a violation of these provisions that causes economic loss or personal injury to a patient would be punishable as a misdemeanor, this bill would impose a state-mandated local program. The bill would not affect a psychotherapist's ability to deny a ~~parent~~ *parent's* or guardian's request to inspect or obtain a minor's records in specified circumstances, and would not affect the psychotherapist's immunity from liability for that decision.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56.106 is added to the Civil Code, to
2 read:

56.106. (a) Notwithstanding Section 3025 of the Family Code, paragraph (2) of subdivision (c) of Section 56.11, or any other provision of law, a psychotherapist who knows that a minor has been removed from the custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall not release the mental health records of ~~a~~ *the* minor patient and shall not disclose *mental health* information about that minor patient based upon an authorization to release those records signed by the minor's parent or guardian. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or the information about the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

~~(c) This section shall not apply to either a written mental health record maintained by a health facility as defined in subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code, or an oral disclosure of information in compliance with Section 56.1007 by that facility.~~

~~(d)~~

(c) When the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient under the circumstances described in subdivision (a), the parent or guardian seeking the release of the minor's records or information about the minor shall present a copy of the court order to the psychotherapist before any records or information may be released pursuant to the signed authorization.

~~(e)~~

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a ~~parent~~ *parent's* or guardian's written request to inspect or obtain copies of the

1 minor patient's mental health records, notwithstanding the fact
2 that the juvenile court has issued an order authorizing the parent
3 or guardian to sign an authorization for the release of the mental
4 health records or information about that minor patient. Liability
5 for a psychotherapist's decision not to release the mental health
6 records of the minor patient or not to disclose information about
7 the minor patient pursuant to the authority of subdivision (a) of
8 Section 123115 of the Health and Safety Code shall be governed
9 by that section.

10 ~~(f)~~

11 (e) Nothing in this section shall be construed to impose upon a
12 psychotherapist a duty to inquire or investigate whether a child
13 has been removed from the physical custody of his or her parent
14 or guardian pursuant to Article 6 (commencing with Section 300)
15 to Article 10 (commencing with Section 360), inclusive, of Chapter
16 2 of Part 1 of Division 2 of the Welfare and Institutions Code when
17 a parent *or guardian* presents the minor's psychotherapist with an
18 authorization to release information or the mental health records
19 regarding the minor patient.

20 SEC. 2. Section 123116 is added to the Health and Safety Code,
21 to read:

22 123116. (a) Notwithstanding Section 3025 of the Family Code,
23 paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code,
24 or any other provision of law, a psychotherapist who knows that
25 a minor has been removed from the physical custody of his or her
26 parent or guardian pursuant to Article 6 (commencing with Section
27 300) to Article 10 (commencing with Section 360), inclusive, of
28 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
29 Code shall not allow the parent or guardian to inspect or obtain
30 copies of mental health records of the minor patient. This restriction
31 shall not apply if the juvenile court has issued an order authorizing
32 the parent or guardian to inspect or obtain copies of the mental
33 health records of the minor patient after finding that such an order
34 would not be detrimental to the minor patient.

35 (b) For purposes of this section, the following definitions apply:

36 (1) "Mental health records" means mental health records as
37 defined by subdivision (b) of Section 123105.

38 (2) "Psychotherapist" means a provider of health care as defined
39 in Section 1010 of the Evidence Code.

~~(e) This section shall not apply to either a written mental health record maintained by a health facility as defined in subdivision (a), (b), or (f) of Section 1250, or an oral disclosure of information in compliance with Section 56.1007 of the Civil Code by that facility.~~

~~(d)~~

(c) When the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of a minor patient under the circumstances described in subdivision (a), the parent or guardian requesting to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist and shall comply with subdivisions (a) and (b) of Section 123110 before the records may be accessed by the parent or guardian.

~~(e)~~

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 to deny a ~~parent~~ *parent's* or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the minor patient's mental health records. Liability for a psychotherapist's decision not to allow the parent or guardian to inspect or obtain copies of records pursuant to the authority of subdivision (a) of Section 123115 shall be governed by that section.

~~(f)~~

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code when a parent *or guardian* presents the minor's psychotherapist with a written request to inspect or obtain copies of the minor's mental health records.

SEC. 3. Section 5328.03 is added to the Welfare and Institutions Code, to read:

5328.03. (a) (1) Notwithstanding Section 5328 of this code, Section 3025 of the Family Code, or paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code, a psychotherapist who

1 knows that a minor has been removed from the physical custody
2 of his or her parent or guardian pursuant to Article 6 (commencing
3 with Section 300) to Article 10 (commencing with Section 360),
4 inclusive, of Chapter 2 of Part 1 of Division 2 shall not release
5 mental health records of the minor patient and shall not disclose
6 *mental health* information about that minor patient based upon an
7 authorization to release those records or the information signed
8 by the minor's parent or guardian. This restriction shall not apply
9 if the juvenile court has issued an order authorizing the parent or
10 guardian to sign an authorization for the release of the records or
11 information after finding that such an order would not be
12 detrimental to the minor patient.

13 ~~(b)~~

14 (2) Notwithstanding Section 5328 of this code or Section 3025
15 of the Family Code, a psychotherapist who knows that a minor
16 has been removed from the physical custody of his or her parent
17 or guardian pursuant to Article 6 (commencing with Section 300)
18 to Article 10 (commencing with Section 360), inclusive, of Chapter
19 2 of Part 1 of Division 2 shall not allow the parent or guardian to
20 inspect or obtain copies of mental health records of the minor
21 patient. This restriction shall not apply if the juvenile court has
22 issued an order authorizing the parent or guardian to inspect or
23 obtain copies of the mental health records of the minor patient
24 after finding that such an order would not be detrimental to the
25 minor patient.

26 ~~(e)~~

27 (b) For purposes of this section, the following definitions apply:

28 (1) "Mental health records" means mental health records as
29 defined by subdivision (b) of Section 123105 of the Health and
30 Safety Code.

31 (2) "Psychotherapist" means a provider of health care as defined
32 in Section 1010 of the Evidence Code.

33 ~~(d)~~

34 (c) (1) When the juvenile court has issued an order described
35 in *paragraph (1) of* subdivision (a), the parent or guardian seeking
36 the release of the minor's *mental health* records or information
37 about the minor shall present a copy of the court order to the
38 psychotherapist before any records or information may be released
39 pursuant to the signed authorization.

(2) When the juvenile court has issued an order described in paragraph (2) of subdivision (b), (a) the parent or guardian seeking to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist and shall comply with subdivisions (a) and (b) of Section 123110 of the Health and Safety Code before the parent or guardian is allowed to inspect or obtain copies of the mental health records of the minor patient.

(e)

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient, or to inspect or obtain copies of the minor patient's health records. Liability for a psychotherapist's decision not to release records, not to disclose information about the minor patient, or not to allow the parent or guardian to inspect or obtain copies of the mental health records pursuant to the authority of subdivision (a) of Section 123115 of the Health and Safety Code shall be governed by that section.

(f)

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 when a parent or guardian presents the minor's psychotherapist with an order authorizing the parent or guardian to sign an authorization for the release of information or the mental health records regarding the minor patient or authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient.

~~(d) This section shall not apply to either a written mental health record maintained by a health facility as defined in subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code, or an oral disclosure of information in compliance with Section 56.1007 of the Civil Code by that facility.~~

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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